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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION

6
7 KENNETH R. HUNT, JR.,

8 Petitioner,

No. C 10-5710 PJH (PR)

9 vs.

10 ATTORNEY GENERAL OF THE
11 STATE OF CALIFORNIA,

12 Respondent.
13 /
14 ORDER GRANTING LEAVE TO
15 PROCEED IN FORMA PAUPERIS
16 AND DISMISSING PETITION;
17 DENIAL OF CERTIFICATE OF
18 APPEALABILITY

19 This is a habeas case filed pro se by a California prisoner currently incarcerated at
20 the Correctional Training Facility in Soledad. The case was transferred here from the
21 United States District Court for the Eastern District of California.

22 Petitioner was convicted in Contra Costa County, which is in this district, so venue is
23 proper here. See 28 U.S.C. § 2241(d).

24 **BACKGROUND**

25 Petitioner pleaded nolo contendere to charges of first degree residential robbery,
26 see Cal. Penal Code § 211/212.5(a), with an enhancement for committing a violent crime
27 against a vulnerable person, see *id.* at 667.9(a), and committing a violent crime against a
28 vulnerable person while having had a prior California conviction, see *id.* at 667.9(b). He
was sentenced to a term of fifteen years in prison. Although he says in the petition that he
appealed, it appears that he is referring to state habeas petitions, which were denied.

29 **DISCUSSION**

30 **A. Standard of Review**

31 This court may entertain a petition for writ of habeas corpus "in behalf of a person in
32 custody pursuant to the judgment of a State court only on the ground that he is in custody

1 in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.
2 § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet
3 heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An
4 application for a federal writ of habeas corpus filed by a prisoner who is in state custody
5 pursuant to a judgment of a state court must "specify all the grounds for relief which are
6 available to the petitioner ... and shall set forth in summary form the facts supporting each
7 of the grounds thus specified." Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C.
8 foll. § 2254. "[N]otice' pleading is not sufficient, for the petition is expected to state facts
9 that point to a 'real possibility of constitutional error.'" Rule 4 Advisory Committee Notes
10 (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970)). "Habeas petitions which
11 appear on their face to be legally insufficient are subject to summary dismissal." *Calderon*
12 v. *United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J.,
13 concurring).

14 **B. Legal Claims**

15 As grounds for federal habeas relief, petitioner asserts that: (1) His trial counsel was
16 ineffective in not asking for a lineup; and (2) his due process rights were violated when a
17 hearing on whether the relationship between counsel and petitioner had irrevocably broken
18 down was not reported.

19 Under California law, a nolo contendere plea, such as that petitioner entered here, is
20 the equivalent of a guilty plea and has the same effect. *United States v. Anderson*, 625
21 F.3d 1219, 1220 (9th Cir. 2010) (per curiam) (under California law, a "plea of nolo
22 contendere 'is the functional equivalent of a guilty plea.'") (quoting *People v. Whitfield*, 54
23 Cal. Rptr. 2d 370, 377 (Cal. Ct. App. 1996)). A defendant who pleads guilty cannot later
24 raise in habeas corpus proceedings independent claims relating to the deprivation of
25 constitutional rights that occurred before the plea of guilty. *Haring v. Prosise*, 462 U.S. 306,
26 319-20 (1983) (guilty plea forecloses consideration of pre-plea constitutional deprivations).
27 The only challenges left open in federal habeas corpus after a guilty plea is the voluntary
28 and intelligent character of the plea and the nature of the advice of counsel to plead. *Hill v.*

1 *Lockhart*, 474 U.S. 52, 56-57 (1985); *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). A
2 defendant who pleads guilty upon the advice of counsel may only attack the voluntary and
3 intelligent character of the guilty plea by showing that the advice he received from counsel
4 was not within the range of competence demanded of attorneys in criminal cases. *Id.*;
5 *Lambert v. Blodgett*, 393 F.3d 943, 979 (9th Cir. 2004); *United States v. Signori*, 844 F.2d
6 635, 638 (9th Cir. 1988).

7 Here, petitioner does not contend that the plea was not voluntary and intelligent, nor
8 does he contend that his attorney's advice to plead nolo contendere constituted ineffective
9 assistance, and the two claims he does present, having arisen prior to the guilty plea, were
10 waived by it. The petition will be summarily dismissed. See Rule 4, Rules Governing
11 Section 2254 Cases, 28 U.S.C. foll. § 2254 (court must dismiss habeas petition on initial
12 review if it plainly appears petitioner not entitled to relief).

CONCLUSION

14 Leave to proceed in forma pauperis (document number 9 on the docket) is
15 **GRANTED**. The petition is **DISMISSED** for the reasons set out above.

16 A certificate of appealability is **DENIED** because jurists of reason would not find the
17 court's ruling debatable or wrong. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). If
18 petitioner wishes to appeal this ruling, he must file a timely notice of appeal and ask the
19 United States Court of Appeals for the Ninth Circuit to grant a certificate of appealability.
20 See R.App.P. 22(b)(1).

21 The clerk shall close the file.

22 **IT IS SO ORDERED.**

23 Dated: November 9, 2011.



24 **PHYLLIS J. HAMILTON**
United States District Judge